

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARVIN D. MAYBERRY,

Petitioner,

v.

Case No. 08-13673  
Honorable Nancy G. Edmunds

KENNETH ROMANOWSKI,

Respondent.

---

**ORDER TRANSFERRING CASE TO THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT PURSUANT TO 28 U.S.C. § 2244(b)(3)(A)**

Petitioner Marvin D. Mayberry has filed a *pro se* petition for writ of habeas corpus concerning his 1973 conviction for armed robbery, which was imposed in Detroit, Michigan, Recorder's Court, and for which he was sentenced to life imprisonment with the possibility of parole. For the following reasons, the Court determines that this is Petitioner's third habeas corpus petition and, therefore, the Court concludes that it must transfer this case to the United States Court of Appeals for the Sixth Circuit.

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), codified at 28 U.S.C. § 2241 *et seq.*, amended 28 U.S.C. §§ 2244, 2253, and 2254, which govern habeas corpus proceedings in federal courts. Pursuant to those amendments, an individual seeking to file a "second or successive" habeas petition must ask the appropriate court of appeals for an order directing the district court to consider the petition. *See* 28 U.S.C. § 2244(b)(3)(A); *Stewart v. Martinez-Villareal*, 523 U.S. 637, 641 (1998); *In re Wilson*, 142 F.3d 939, 940 (6th Cir. 1998). This requirement transfers to the court of appeals a screening function which the district court previously performed. *Felker v. Turpin*, 518 U.S. 651, 664 (1996).

In 1973, Petitioner was convicted of armed robbery following a jury trial in Detroit, Michigan, Recorder's Court. Petitioner was released on parole in 1984 and was subsequently re-incarcerated after violating the conditions of his parole. Petitioner has filed two prior habeas corpus petitions with this Court, challenging the same conviction at issue in this case.

In *Mayberry v. Berghuis*, No. 99-CV-76002 (E.D. Mich. Dec. 14, 2000) (Edmunds, J.), this Court denied Petitioner's petition, finding that Petitioner's claims were procedurally defaulted and that Petitioner failed to establish cause to excuse the default. *Id.* Following, on November 2, 2005, Petitioner filed another petition, which was transferred as a successive petition to the United States Court of Appeals for the Sixth Circuit. *Mayberry v. Jackson*, No. 05-CV-74200 (E.D. Mich. Nov. 18, 2005) (Edmunds, J.). On April 27, 2006, the Sixth Circuit denied Petitioner's request to file a successive habeas petition. Presently, Petitioner is again attempting to file a successive habeas petition without obtaining the proper appellate authorization to file a subsequent petition as required by 28 U.S.C. § 2244(b)(3)(A).

Accordingly, on the basis of the above, **IT IS ORDERED** that Petitioner's petition for writ of habeas corpus be transferred to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631<sup>1</sup> and *Sims v. Terbush*, 111 F.3d 45, 47 (6th Cir. 1997) ("when a prisoner has sought § 2244(b)(3) permission from the district court, or when a second or

---

<sup>1</sup>28 U.S.C. § 1631 provides in pertinent part:

Whenever a civil action is filed in a court . . . and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action . . . to any other such court in which the action . . . could have been brought at the time it was filed . . . , and the action . . . shall proceed as if it had been filed in . . . the court to which it is transferred on the date upon which it was actually filed in . . . the court from which it was transferred.

successive petition for habeas corpus relief . . . is filed in the district court without § 2244(b)(3) authorization from this court, the district court shall transfer the document to this court pursuant to 28 U.S.C. § 1631”).

s/Nancy G. Edmunds  
Nancy G. Edmunds  
United States District Judge

Dated: September 18, 2008

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on September 18, 2008, by electronic and/or ordinary mail.

s/Carol A. Hemeyer  
Case Manager